

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.11.2006

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
and
THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

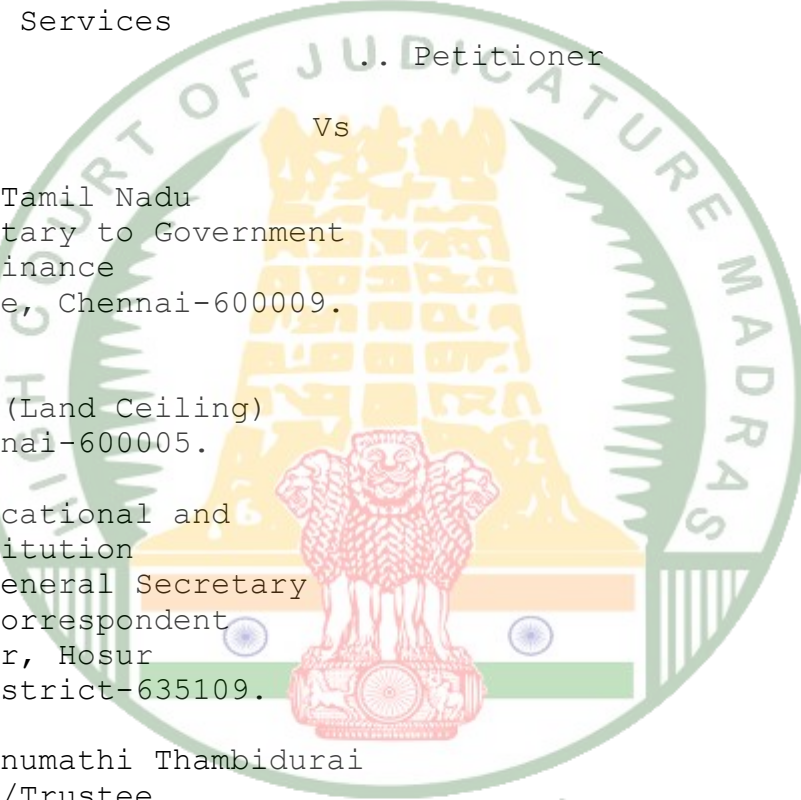
W.P.No.44540 of 2002

Tamil Nadu Legal Services
Authority.

.. Petitioner

Vs

1. The State of Tamil Nadu
rep. by Secretary to Government
Ministry of Finance
Fort St.George, Chennai-600009.
2. The Director
Land Reforms (Land Ceiling)
Chepauk, Chennai-600005.
3. Adhiyaman Educational and
Research Institution
rep. by its General Secretary
Trustee-cum-Correspondent
Dr.M.G.R.Nagar, Hosur
Dharmapuri District-635109.
4. Dr.(Mrs.) Bhanumathi Thambidurai
Correspondent/Trustee
Adhiyaman Educational and
Research Institution
C-1775, Anna Nagar
Chennai-600040.
5. Mr.Thambidurai
State Minister for Education
Fort St.George, Chennai-600009.
6. All India Council for Technical
Education (AICTE), New Delhi.



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7. Anna University
rep. by its Registrar
Guindy, Chennai-600025.

.. Respondents

PRAYER: Petition under Article 226 of the Constitution of India for issue of a writ of declaration declaring G.O.Ms.No.234, dated 17.6.2002 issued by Revenue (Land Reforms 3(1) Department under the first respondent, as unconstitutional and ultravires of Tamil Nadu Land Reforms (Fixation of Land Ceiling) Act, award Costs.

For Petitioner : Mr.Sundar Narayan
for M/s.R.Yashod Vardhan
For Respondents: Mr.V.Viswanathan
Addl. Government Pleader
for Respondents 1 & 2

ORDER

(Order of this Court was made by P.D.DINAKARAN,J.)

The petitioner, who is a practicing lawyer, has moved this Court pro bono publico, by way of this writ petition, to declare G.O.Ms.No.234, Revenue [Land Reforms 3(1)] Department, dated 17.6.2002 issued by the first respondent, in and by which, the government granted permission by invoking the power vested in it under Section 37B(2) of the Land Reforms (Fixation of Land Ceiling) Act, 1961 in respect of the lands of the third respondent for a period of three years for the purpose of education, as unconstitutional and ultra vires the Tamil Nadu Land Reforms (Fixation of Land Ceiling) Act.

2. However, Mr.Sundar Narayan, learned counsel appearing for the petitioner, seeks permission of this Court to withdraw the public interest litigation, which can only be portrayed as somewhat unfortunate, as the main petition is brought to highlight the gross violations of the constitutional and statutory rights by the fifth respondent, who, at the relevant period of time, happened to be the State Minister for Education and the Pro-Chancellor of Anna University, who denied affiliation to other Private Engineering Colleges on the ground that the lands held by them were without permission from the Government under Section 37B of the Act, but, on the other hand, accorded permission from the State Government under Section 37B of the Act for the third respondent/Institution, which was founded by him and presently chaired by the fourth respondent, who happens to be the wife of the fifth respondent.

3. The question that revolves in our mind at this stage is, whether a public-minded person who has moved this Court pro bono publico, by way of this writ petition, is entitled to withdraw the proceedings from the court.

4. There is no necessity to argue on this point, or to dilate on the facts and circumstances of the case. The prayer, if granted, would frustrate the important issues the main petition has served to highlight.

5. Even the learned counsel appearing for the petitioner had not stated a reason for withdrawing the writ petition, but for making an endorsement, which reads as under:

"Petitioner may be permitted to withdraw the above writ petition."

6. In a public interest litigation, unlike traditional dispute resolution mechanism, there is no determination or adjudication of individual rights. While in the ordinary conventional adjudications the party structure is merely bi-polar and the controversy pertains to the determination of the legal consequences of past events and the remedy is essentially linked to and limited by the logic of the array of the parties, in a public interest action the proceedings cut across and transcend these traditional forms and inhibitions. The compulsion for the judicial innovation of the technique of a public interest action is the constitutional promise of a social and economic transformation to usher in an egalitarian social order and a welfare State. Effective solutions to the problems peculiar to this transformation are not available in the traditional judicial system. The proceedings in a public interest litigation are, therefore, intended to vindicate and effectuate the public interest by prevention of violation of the rights, constitutional or statutory, of sizeable segments of the society, which owing to poverty, ignorance, social and economic disadvantages cannot themselves assert – and quite often not even aware of – those rights. The technique of public interest litigation serves to provide an effective remedy to enforce these group rights and interests. In order that these public causes are brought before the courts, the procedural techniques judicially innovated specially for the public interest action recognises the concomitant need to lower the locus standi thresholds so as to enable public-minded citizens or social action groups to act as conduits between these classes of persons of inherence and the forum for the assertion and enforcement of their rights. The dispute is not comparable to one between private parties with the result there is no recognition of the status of a dominus litis for any individual or group of individuals to determine the course or destination of the proceedings, except to

the extent recognised and permitted by the court. The "rights" of those who bring the action on behalf of the others must necessarily be subordinate to the "interests" of those for whose benefit the action is brought. The grievance in a public interest action, generally speaking, is about the content and conduct of government action in relation to the constitutional or statutory rights of segments of society and in certain circumstances the conduct of government policies, vide *Sheela Barse v. Union of India*, (1988) 4 SCC 226.

7. By proposing to withdraw this writ petition, the petitioner has done no service either to himself or to the cause he sought to serve. If we accept this request of an individual, who brings a public interest litigation, we will render the proceedings in public interest litigation vulnerable to and susceptible of a new dimension which might, in conceivable cases, be used by persons for personal ends resulting in prejudice to the public weal.

8. Under such circumstances, we refuse permission for the withdrawal of the writ petition, and direct that the petitioner be deleted from the array of parties in this proceeding. The proceedings shall now be proceeded with a direction to the Tamil Nadu Legal Services Authority to prosecute the petition.

In the result, the writ petition is dismissed qua the petitioner herein, but the name of the Tamil Nadu Legal Services Authority shall be substituted in place of that of the petitioner. The petitioner, who is permitted to withdraw, is directed to pay Rs.10,000/- (Rupees ten thousand only) as costs to the Tamil Nadu State Legal Services Authority.

29.11.2006

The W.P.M.P.No.18974/06 having been posted on 22.12.2006 subsequent to the order of this Court dated 29.11.2006 and the Petitioner Viz., G.R. Swaminathan praying that in the circumstances states and in the affidavit filed therewith the High Court will be pleased to expunge the remarks and recall the order in so far as it relates to the adverse remarks in the order and the imposition of costs by the order dated 29.11.2006 and in the presence of the Mr.K. Kannan, Advocate for the Petitioner and of Mr. Viswanathan, Special governemnt Pleader (Writs) on behalf of the Respondents 1 & 2 and of Mr.R. Parthiban, Advocate for the 5th Respondent and of M/s. G.M. Associates Advocates for the 7th respondents the Court made the following order:-

(Order of the Court was made by P.D. DINAKARAN.J)

We perused the affidavit filed by Mr.G.R.Swaminathan, a practising advocate, who initiated the Public Interest Litigation, W.P.No.44540 of 2002 seeking a writ of declaration to declare G.O.Ms.No.234, Revenue [Land Reforms 3(1)] Department, dated 17.6.2002 issued by the first respondent, as unconstitutional and ultra vires the Tamil Nadu Land Reforms (Fixation of Land Ceiling) Act, 1961.

2. On 29.11.2006, the above writ petition was sought to be withdrawn by the writ petitioner, and the endorsement to that effect reads as under:

"Petitioner may be permitted to withdraw the above writ petition"

3. But, this Court, by order dated 29.11.2006, finding that permitting the writ petitioner to withdraw the above writ petition would not serve any purpose either to the writ petitioner or to the cause he sought to serve, refused the permission for the withdrawal of the writ petition and instead, permitted the writ petitioner to withdraw himself from the above writ petition and directed the Tamil Nadu Legal Services Authority to prosecute the writ petition. In the said order dated 29.11.2006, this Court also directed the writ petitioner to pay a sum of Rs.10,000/- as costs to the Tamil Nadu Legal Services Authority.

4. The petitioner filed an affidavit dated 16.12.2006 stating that he was under bona fide impression that the course of action contemplated by the Government would completely govern the issue raised in the writ petition and therefore, there is no need to prosecute the writ petition. The petitioner, in the said affidavit, also tendered unconditional apology and prayed to expunge the adverse remarks made in the order dated 29.11.2006 as well as to remove the costs imposed.

5. Mr.K.Kannan, learned counsel appearing for the petitioner submits that the petitioner never intended to cause any prejudice to the public good. In that view of the matter, we accept the explanation offered by the writ petitioner as in his affidavit dated 16.12.2006 and the submission made by Mr.K.Kannan, learned counsel appearing for the petitioner and we also make it clear that the observation made in the order dated 29.11.2006 in W.P.No.44540 of 2002 need not be construed to mean that it causes any personal aspersion against the writ petitioner as we have only, by order dated 29.11.2006, laid down the law. However, the direction issued to the petitioner to pay a sum of Rs.10,000/- as costs to the Tamil Nadu State legal Services Authority stands recalled.

This petition is ordered accordingly. This order shall form part of the order dated 29.11.2006 in W.P.No.44540 of 2002.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To:

1. The Secretary to Government
State of Tamil Nadu
Ministry of Finance
Fort St.George, Chennai-600009.
2. The Director
Land Reforms (Land Ceiling)
Chepauk, Chennai-600005.
3. All India Council for Technical
Education (AICTE), New Delhi.
4. The Secretary,
Tamil Nadu State Legal Services Authority
High Court Campus, Chennai
(With Copy of Writ Petition & Affidavit)

JSK(CO)
SR/12.12.2006
kk 19/1

W.P.No.44540 of 2002
29.11.2006/ 22.12.2006

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